IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9229 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANILAL @ MANIYO MANGALBHAI RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged the order dated 15.8.2002, by which he is

detained as a 'Bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, he is served with the grounds of detention. In the said grounds, there is a reference about seven criminal cases. All these cases are under the Bombay Prohibition Act. It is alleged against the petitioner that he is dealing in illicit liquor and that he is a headstrong person. The authorities have also considered the statements of some witnesses, who have highlighted the activities of the petitioner. The Authority, after having been satisfied from the material on record that the petitioner is a 'bootlegger', ultimately passed the said order of detention. The said order is challenged in this petition.

At the time of hearing of the petition, learned Advocate for the petitioner submitted various grounds. It is argued on behalf of the petitioner that there is a delay in passing the detention order as the last registered offence is of 6th July, 2002 and the authority has passed the order after about one month and 9 days and that in view of the delay in passing the detention order, the detention order is required to be set aside.

Mr.Pancholi, learned AGP, on the other hand, submitted that the authorities thereafter recorded statements of witnesses and thereafter, after verification of those statements, ultimately, passed the detention order. He, therefore, submitted that the delay in passing the order is appropriately explained. the said explanation is given in paragraph 9 of the reply.

The learned Advocate for the petitioner relied on the decision of this Court (Coram : H.K. Rathod, J.) in Vimal Chhaganhai Koli v. State of Gujarat, rendered in Spl.C.A.No.13125 of 2000 on 25th June, 2001. In the said decision, this Court has observed as under in paragraph 7 :-

> " ... ...
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> 7. I have heard Ld.Advoates appearing for the respective partes. In respect of the first contention raised by Ld.Advocate Ms.Subhadra G. Patel, there was one month delay in passing the detention order from the date of the last offence registered against the petitioner This delay remained unexplained and there was no proximate or having any direct nexus which requires to

pass impugned order of detention. Therefore, the view taken by this Court in reported decision in case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381. The relevant paragraph 21 are as under :-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
>
> ... ..."

In the instant case, there is a delay, viz., of more than one month from the date of the last offence registered against the petitioner, in passing the order

of detention. On the aforesaid ground of delay in passing the detention order from the date of the last offence registered against the petitioner, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

25th March, 2003 (P.B. Majmudar, J.)

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(apj)